

**STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE SERVICES**

Before the Commissioner of the Office of Financial and Insurance Services

In the matter of:

Powrie & Associates, Inc.
950 West University Drive, Suite 200
Rochester, MI 48307

Enforcement Case No. 05-3809

Thomas J. Powrie
1039 Stony Pointe Boulevard
Rochester, MI 48307

Respondents

Issued and entered
on February 17, 2006
by Linda A. Watters
Commissioner

CONSENT ORDER AND STIPULATION

A. ALLEGATIONS

The staff of the Office of Financial and Insurance Services ("OFIS") alleges that the following facts are true and correct:

1. At all times pertinent, Powrie and Associates, Inc., License No. 0008124, was a licensed insurance agency in the State of Michigan, since July 18, 1984.
2. At all times pertinent, Thomas J. Powrie, License No. 0030597, was an officer/agent for Powrie and Associates, Inc. and a licensed resident producer in the State of Michigan, since May 16, 1984. Thomas J. Powrie, and Powrie and Associates are at times collectively referred to as ("Respondents").

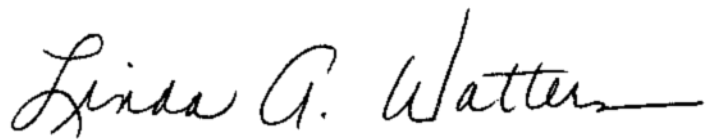
3. On or about June 17, 2005, OFIS received a complaint from XXXXXXXXXXXXXXXX on behalf of Vac-All Services, Inc. and Gradall Rental Services, Inc. ("Complainants") outlining possible fraudulent conduct by Respondents.
4. The Complainants alleged that the Respondents from 1996 through 2004 fraudulently issued invoices and/or altered declaration pages that overcharged the Complainants approximately \$2.3 million dollars on umbrella, workers' compensation, auto, liability, and marine policies by inflating the premiums charged.
5. As a licensed agency and a licensed resident producer of insurance, Respondents knew or had reason to know that Section 1207(1) of the Michigan Insurance Code, MCL 500.1207(1), states that an agent shall be a fiduciary for all money received or held by the agent in his or her capacity as an agent. Failure by an agent in a timely manner to turn over the money which he or she holds in a fiduciary capacity to the persons to whom they are owed is prima facie evidence of violation of the agent's fiduciary responsibility.
6. Respondents further knew or had reason to know that Section 1207(2) of the Michigan Insurance Code, MCL 500.1207(2), states that an agent shall use reasonable accounting methods to record funds received in his or her fiduciary capacity including the receipt and distribution of all premiums due each of his or her insurers. An agent shall record return premiums received by or credited to him or her which are due an insured on policies reduced or canceled or which are due a prospective purchaser of insurance as a result of a rejected or declined application.
7. Respondents further knew or had reason to know that Section 2003(1) of the Michigan Insurance Code, MCL 500.2003(1), states that a person shall not engage in a trade practice which is defined in this uniform trade practices act or is determined pursuant to this act to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.
8. Respondents further knew or had reason to know that Section 2018 of the Michigan Insurance Code, MCL 500.2018, states that an unfair method of competition and an unfair or deceptive act or practice in the business of insurance include making false or fraudulent statements or representations on or relative to an application for an insurance policy for the purpose of obtaining a fee, commission, money, or other benefit from an insurer, agent, broker, or individual.
9. Respondents further knew or had reason to know that Section 2026(1)(a) of the Michigan Insurance Code, MCL 500.2026(1)(a), states that an unfair method of competition and unfair or deceptive acts or practices in the business of insurance are a course of conduct indicating a persistent tendency to engage in that type of conduct, which included misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue.

10. Respondents further knew or had reason to know that Section 1239(1)(d) of the Michigan Insurance Code, MCL 500.1239(1)(d), provides that the Commissioner may revoke a producer's license for improperly withholding, misappropriating, or converting any money or property received in the course of doing insurance business.
11. Respondents further knew or had reason to know that Section 1239(1)(e) of the Michigan Insurance Code, MCL 500.1239(1)(e), provides that the Commissioner may revoke a producer's license for intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.
12. Respondents further knew or had reason to know that Section 1239(1)(h) of the Michigan Insurance Code, MCL 500.1239(1)(h), provides that the Commissioner may revoke a producer's license for using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.
13. Based on Respondent Thomas J. Powrie's conduct, Respondent has violated Section 1207(1) and (2), Section 2003(1), Section 2018, Section 2026(1)(a), and Section 1239(1)(d), (e), and (h) of the Michigan Insurance Code by failing to act as a fiduciary for money received in his capacity as an agent; failing to use reasonable accounting methods to record money received from an insured or money refunded from an insurer and due the insured; using unfair methods of competition and deceptive acts or practices; engaging in unfair methods of competition or deceptive practices by making false or fraudulent representations on insurance documents to obtain a fee or commission or misrepresentations concerning pertinent facts or insurance policy provisions; withholding, misappropriating and converting monies received in the course of business; misrepresenting the terms of an actual or proposed insurance contract; and by using fraudulent, coercive or dishonest practices in the conduct of business, thereby subjecting Respondent Thomas J. Powrie to revocation of his insurance agency license and insurance producer's license, the levying of civil fines and restitution to the complainants pursuant to Sections 1239 and 1244 of the Michigan Insurance Code, MCL 500.1239 and 500.1244.
14. Respondents deny the allegations in paragraph 4 and 13 above.
15. Respondent Thomas J. Powrie has responsibility to repay Complainants and, despite denying the allegations, agrees to do so as set forth in the following section. Respondent Powrie & Associates, Inc. alleges it has no such responsibility and its agreement to pay Complainants is solely for the purpose of serving as a guarantor of any and all such payments referenced and not based upon its legal responsibility to do so.

B. ORDER

Based on the findings of fact and conclusions of law above and Respondents' stipulation, it is ORDERED that:

1. Respondent Thomas J. Powrie shall immediately cease and desist from operating in such a manner as to violate Sections 1207(1) and (2), 1239(1)(d), (e), and (h), 2003(1), 2018, and 2026(1) of the Michigan Insurance Code, MCL 500.1207(1) and (2), 500.1239(1)(d), (e), and (h), MCL 500.2003(1), 500.2018, and 500.2026(1).
2. Pursuant to the terms of a Settlement Agreement entered into by Respondents and Vac-All Services, Inc. and Gradall Rental Services, Inc. Respondents shall pay restitution in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000.00) plus a separate amount of One Hundred Thousand Dollars (\$100,000.00) as an interest component (totaling One Million Six Hundred Thousand Dollars (\$1,600,000.00)) to Complainants Vac-All Services and Gradall Rental Services.
3. Respondent Thomas J. Powrie's licensee(s) and authority are hereby **REVOKED**.
4. Respondent Thomas J. Powrie's agency associations, as an officer/agent and affiliated/agent, at Respondent Powrie and Associates are inactive.
5. Respondent Thomas J. Powrie shall stopped working for or have any connection with Respondent Powrie and Associates.
6. No enforcement action shall be taken against Respondent Powrie & Associates.
7. The above referenced enforcement action is hereby dismissed.



Linda A. Watters
Commissioner